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November 29, 2023

The Honorable Mike Johnson
Speaker of the House
United States House of Representatives
Washington, D.C. 20515

The Honorable Hakeem Jeffries
Minority Leader
United States House of Representatives
Washington, D.C. 20515

Re: S.J. Res.32—Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Bureau of Consumer Financial Protection relating to "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)"

Dear Speaker Johnson and Minority Leader Jeffries:

The American Bankers Association (ABA) strongly supports S.J. Res.32, a joint resolution disapproving the rule submitted by the Consumer Financial Protection Bureau (CFPB) relating to "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)." On March 30, 2023, the CFPB issued a final rule to implement section 1071 of the Dodd Frank Act under the Equal Credit Opportunity Act. It requires lenders to collect and report to the CFPB information about lending to "women owned, minority-owned and small businesses." Section 1071's purpose is to facilitate the enforcement of fair lending laws and community development efforts. ABA and 51 state bankers associations filed a comment letter with the CFPB on Jan. 6, 2022.

The final rule will apply to banks, credit unions, fintechs and other nonbank lenders that make at least 100 small business loans in each of the two preceding calendar years. Covered "small business loans" are loans to for-profit entities with no more than $5 million in gross annual revenue in the preceding fiscal year. Reporting would be required on loans originated as well as applications that do not result in loans. The CFPB's proposed rules would require lenders to report 81 data fields, a significant expansion over the 13 data points Congress originally required, for each application or loan.[1] The Bureau will publish the 1071 data with some redactions for privacy, which the Bureau plans to announce after it has collected the first year's data and has studied the re-identification risk posed by the data.

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[1] Data points include: a unique identifier for each loan or application; the date of the application method; the application recipient; the loan's purpose; the type of credit requested; the amount requested and approved; the action taken and the date action is taken; the address and the census tract of the principal place of business of the applicant; whether the business is women-owned, minority-owned and/or LGBTQI+-owned; the race, gender, and ethnicity of the business's principal owners (for up to four principal owners); loan pricing, including interest rates (if the rate is variable, then the index name, index value, and margin), the introductory rate period, fees, broker charges, and prepayment penalties; the number of employees and contractors; the time in business; the number of principal owners; and the NAICS code associated with the small business.

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While industry fully supports complying with the nation's fair lending laws, the enormity of the data points to be collected and the 100-loan threshold for determining which lenders must report means compliance with this new rule will place significant burdens on banks, especially community banks. Defining a small business as one with gross annual revenues of $5 million or less expands the rule to cover medium and larger businesses, going beyond what Congress intended. Additionally, the final rule states that the CFPB has not decided what vehicle it will use to make privacy determinations but does not believe it is legally required to go through a public rule-making procedure to determine whether and how data will be redacted prior to publication. Publication will create privacy concerns for small businesses that do not want their information made public and will not have a say in it. Finally, although section 1071 applies to non-banks and banks alike, banks will be regularly examined for compliance and data accuracy and nonbanks will not face such scrutiny.

We are concerned that the costs associated with collecting the data and the anticipated reliance on statistical manipulation in fair lending supervision and enforcement will discourage bank lending to small businesses, particularly by community and mid-size banks, and we strongly urge the House to pass S.J. Res.32.

Sincerely,

Cc: Members of the United States House of Representatives